record offered in evidence in a suit for the property therein described. *Held*, that the evidence be excluded as the acknowledgment was not sufficient to admit the bill to record. *Citizens' Trust Co.* v. *Butler*, 103 S. E. 852 (Ga.).

The report does not say whether or not the secretary was a stockholder. One does not connote the other. *Florida Savings Bank* v. *Rivers*, 36 Fla. 575, 18 So. 850; 1 MORAWETZ, PRIVATE CORPORATIONS, § 505. If he was not, the case is certainly wrong. *Sawyer* v. *Cox*, 63 Ill. 130, 135; *Horbach* v. *Tyrrell*, 48 Neb. 514, 67 N. W. 485. If he was, the decision is in accord with the weight of authority. *Ogden Building Association* v. *Mensch*, 196 Ill. 554, 63 N. E. 1049; *Hayes* v. *Southern Association*, 124 Ala. 663, 26 So. 527. Two reasons are given for this disqualification. One is that taking an acknowledgment is a judicial act. *Heilman* v. *Kroh*, 155 Pa. St. 1, 25 Atl. 751; *Murrell* v. *Diggs*, 84 Va. 900, 6 S. E. 461. But this is inconsistent with the rule that the agent or attorney of a party financially interested is not disqualified. *National Cash Register Co.* v. *Lesko*, 77 Conn. 276, 58 Atl. 967; *Penn* v. *Garvin*, 56 Ark. 511, 20 S. W. 410. And it is inconsistent with the same rule as to a relative or husband. *Lynch* v. *Livingston*, 6 N. Y. 422; *Kimball* v. *Johnson*, 14 Wis. 674. Moreover, it is opposed to the weight of authority. *Learned* v. *Riley*, 96 Mass. 109. The second reason given is public policy. *Hayes* v. *Southern Association, supra;* JONES, CHATTEL MORTGAGES, 5 ed., § 249. But there is a public policy on the other side in the unassailability of records. As a general rule a stockholder is not more interested than an attorney or husband. A notary is not like a juror or witness to a will, he is a person commissioned by the state to hold a position of trust. And a suspicious grantor can always pick another notary. A few decisions do hold that a stockholder is qualified. *Read* v. *Toledo Loan Co.*, 68 Oh. St. 280, 67 N. E. 729; *Cooper* v. *Hamilton Loan Association*, 97 Tenn. 285, 37 S. W. 12.

ELECTRIC WIRES — CONFLICTING RIGHTS OF TELEPHONE AND POWER COMPANIES — INDUCTION AND CONDUCTION. — A South Dakota statute provides that electric power lines erected on the highways shall not interfere with telephone lines already there (1919 REVISED CODE SO. DAKOTA, §§ 8591, 8594). The defendant power company erected its lines on a street occupied by the plaintiff telephone company. The electricity from the power line was carried over to the lines of the telephone company by electro-magnetic induction, rendering the telephone line useless unless a metallic return circuit were installed. *Held*, that the defendant pay for the installation of the return circuit. *Dakota Central Tel. Co.* v. *Spink County Power Co.*, 176 N. W. 143 (S. D.).

On the ground that priority of time gives priority of right some courts without the aid of a statute have reached the same result. *Paris Elec. Co.* v. *S. W. Tel. Co.*, 27 S. W. 902 (Texas); *W. U. Tel. Co.* v. *Los Angeles Elec. Co.*, 76 Fed. 178. See *Tri-County Mut. Tel. Co.* v. *Bridgewater Elec. Power Co.*, 40 S. D. 410, 414, 167 N. W. 501, 503. See CURTIS, ELECTRICITY, § 362. Other courts have held that neither company has a superior right to the use of the street, and hence that neither can object to incidental injury resulting from the legitimate exercise of the other's legal right. *Cumberland Tel. & Tel. Co.* v. *United Elec. R. R.*, 42 Fed. 273. See THOMPSON, ELECTRICITY, 57. Many cases denying relief, however, involve interference by trolley lines with prior telephone lines, which are sometimes distinguished from the principal case on the ground that the telephone line must take the risk of interference by those using the street for its primary purpose of travel. *Cincinnati Inclined Plane R. R.* v. *City & Suburb. Tel. Assn.*, 48 Ohio St. 390, 27 N. E. 890; *Hudson River Tel. Co.* v. *Watervliet Turnpike & R. R. Co.*, 135 N. Y. 393, 32 N. E. 148. See CURTIS, ELECTRICITY, § 355. If this distinction is sound, a telephone company could not recover for interference by an electric company used for

lighting the streets. See *W. U. Tel. Co.* v. *Los Angeles Elec. Co.*, *supra*, 181. Whatever be the true rule at common law, the court rightly decided that, under the statute, the power company must bear the expense necessary to prevent injury, even though this involved improvements on the telephone line.

EQUITY — JURISDICTION — STREET RAILWAYS — FRANCHISES — INJUNCTION AGAINST PASSAGE OF A RESOLUTION INVOLVING A FORFEITURE. — A franchise contract between the city and a traction company provided for a forfeiture of all the rights under it in case certain construction work was not completed at a stipulated time. The municipal board, to which power was delegated, was about to pass a resolution declaring a forfeiture because of the non-performance of the conditions. The district court gave an order granting a permanent injunction against such action by the board. The city appealed. *Held*, that the order be reversed. *Gas & Electric Securities Co.* v. *Manhattan & Queens Traction Corp.*, 266 Fed. 625 (C. C. A.).

It is a well-recognized principle that equity will not enjoin the passage of municipal ordinances or resolutions which are legislative in character. See *Hatcher* v. *Dallas*, 133 S. W. (Tex.) 914, 921. Also see 23 HARV. L. REV. 470. The restraining power is limited ordinarily to enjoining the enforcement, rather than the passage, of *ultra vires* legislative measures by a municipality. See 4 POMEROY, EQ. JURIS., 4 ed., § 1763. The authorities uniformly hold that the granting of a franchise is a legislative function. See 1 NELLIS ON STREET RAILWAYS, 2 ed., § 22. The difficulty arises in determining whether the declaration of a forfeiture of a franchise is a legislative or a judicial question. The federal court falls into the error of concluding that if granting a franchise is a legislative act, the repealing of it necessarily must be of similar character. *Mercantile Trust Co.* v. *Denver*, 161 Fed. 769. It would seem that it is a judicial act as it involves the application with discretion of principles of law to the facts to determine whether the forfeiture has occurred. *Knickerbocker Trust Co.* v. *Kalamazoo*, 182 Fed. 865. And if there were such a forfeiture as to be abhorrent to equity, there should be no inherent lack of power to act. *North Jersey St. Ry. Co.* v. *South Orange*, 58 N. J. E. 83, 43 Atl. 53; *Noyes* v. *Anderson*, 124 N. Y. 175, 26 N. E. 316. The result in the present case may be justified by recognizing that the completion of the road is a condition precedent to the existence of a vested right under the franchise, and that the traction company was merely operating under a license. Hence in reality no forfeiture in the equitable sense was worked, and it is not incumbent upon equity to act.

EQUITY — PROCEDURE — PARTIES — INDISPENSABLE PARTIES — RIGHT OF SALESMAN OF A CORPORATION TO ENJOIN STRIKING EMPLOYEES WITHOUT JOINING THE CORPORATION AS PARTY PLAINTIFF. — The plaintiff, who received in addition to his salary as salesman a commission in proportion to the output of the corporation, sought to enjoin strikers from improperly interfering with the work of the employees of the company. The corporation was not joined as a party. If the corporation was a necessary party plaintiff, there was no such diversity of citizenship as to warrant the jurisdiction of the federal court. *Held*, that there was no jurisdiction. *Davis* v. *Henry*, 266 Fed. 261 (C. C. A.).

It is well established in equity that a party is indispensable if its rights will necessarily be affected by the decree, or if without the party, a final determination consistent with equitable principles is impossible. *Shields* v. *Barrow*, 17 How. (U. S.) 130; *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199. So generally, where the plaintiff's interest is identified with that of the corporation and involves an internal matter of the corporation, the corporation is a necessary party plaintiff. *Consolidated Water Co.* v. *Babcock*, 76 Fed. 243; *Iron Molders' Union* v. *Niles-Bement-Pond Co.*, 258 Fed. 408. And if this